

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CR. NO. 1:07cr183-WKW
)	
RICKEY RANDELL WREX SMITH)	

**GOVERNMENT’S BRIEF IN SUPPORT OF DEFENDANT’S
MOTION TO CONTINUE TRIAL**

Comes now the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and files this response in support of Defendant Rickey Randell Wrex Smith’s Unopposed Motion for Continuance of Trial (Doc. #86) (hereinafter “Motion”).

1. Smith has asked this Court to continue the current trial setting because his “counsel is compiling information from [him] and believes this will possibly resolve this matter.” Mot. at 1. That statement alludes to certain information that Smith has only very recently provided to law enforcement officers concerning criminal conduct he allegedly witnessed – information which, if it rises to the level of substantial assistance, could in theory mitigate Smith’s situation and precipitate a negotiated plea of guilty.

2. The Federal Bureau of Investigation has indicated a desire to follow up on the information Smith provided, but so far the agency has not had sufficient opportunity to verify the information provided by Smith, let alone determine whether it can be used to initiate any new investigation and/or prosecution. The case agent conservatively estimates that it will take between 90 and 120 days to complete that process.

3. Even if it does not result in a negotiated settlement of the charges, much of the information that Smith recently relayed to law enforcement relates to his underlying

offense conduct in this case and could potentially lead to the discovery of additional crimes of violence committed by Smith or others, which would likely impact both the prosecution and the defense at trial.

4. The Speedy Trial Act provides that a defendant must be tried within seventy days from the filing of his indictment or information, or from the date on which he made his first appearance before the court. 18 U.S.C. § 3161(c)(1); *see also generally United States v. Vasser*, 916 F.2d 624 (11th Cir. 1990). The Act expressly excludes from the seventy-day calculation any period of delay “resulting from a continuance granted by any judge . . . at the request of the defendant or his counsel . . . if the judge granted such continuance on the basis of his finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A).

5. In determining whether to grant such a continuance under, the court must consider, among other things, “[w]hether the failure to grant such a continuance in a case . . . would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.” 18 U.S.C. § 3161(h)(7)(B)(iv).

6. Although the trial has already been continued more than once, a further continuance to allow both parties an opportunity to investigate the information provided by Smith would best serve the ends of justice.

7. Smith is currently being held in custody on a writ from the Eastern Reception Diagnostic and Corrections Center in Bonne Terre, Missouri, where he was incarcerated for violating his parole in regards to a 1983 conviction for sodomy in

Crawford County, Missouri. If convicted of the offense alleged in Count 1 the indictment, Smith faces a statutorily-mandated sentence of no less than 15 years imprisonment. *See* 18 U.S.C. § 2251(e).

8. This Court has not yet resolved Smith's motion to dismiss the indictment on double jeopardy grounds, though the magistrate judge has issued a Report and Recommendation denying the motion. *See* Doc. #84. Smith's objections to the R&R were filed earlier this week. *See* Doc. #85.

For the foregoing reasons, the United States joins in Smith's Motion.

Respectfully submitted this the 24th day of March, 2009.

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CERTIFICATE OF SERVICE

I, Nathan D. Stump, Assistant United States Attorney, hereby certify that on this the 24th day of March, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically serve a copy upon all counsel of record, including Alex Tandy, Esq., counsel for Defendant.

Respectfully submitted,

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